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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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WILLKIE FARR & GALLAGHER

September 21, 2000

**EX PARTE**

**VIA HAND DELIVERY**

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: *Ex Parte* Submission in CC Docket No. 96-115**

Dear Ms. Salas:

This letter is sent on behalf of the Association of Directory Publishers ("ADP") to provide additional support for its Petition for Reconsideration of the Third Report and Order released September 9, 1999, in the above-referenced docket.<sup>1</sup> In addition, ADP urges the Commission to promptly release an order on reconsideration resolving the petitions for reconsideration of ADP and other parties.

**I. The Commission Should Grant ADP's Request for Clarification That ILECs May Not Unreasonably Discriminate in the Provision of CLEC SLI to Directory Publishers.**

In its Petition for Reconsideration, ADP requested, among other things, that the Commission clarify that it would constitute unreasonable discrimination under Sections 201(b) and 202(a) of the Communications Act, as amended (the "Act"), for an incumbent local exchange carrier ("ILEC") to refuse to provide subscriber list information ("SLI") gathered from competitive local exchange carriers ("CLECs") by the ILEC pursuant to interconnection agreements with CLECs if the ILEC provides

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<sup>1</sup> In re Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Third Report and Order, 14 FCC Rcd. 15550 (1999) ("Third Report and Order").

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these data to its own directory publishing affiliate.<sup>2</sup> ILECs gather CLECs' SLI because of their position as the dominant providers of local exchange services in their regions.<sup>3</sup> Most CLECs enter interconnection agreements with ILECs, pursuant to which they provide directory listings and daily updates of those listings to the ILEC and the ILEC's directory publishing affiliate at no charge.<sup>4</sup> While these listings are routinely made available to the ILECs' directory publishing affiliates, some ILECs refuse to provide them to independent directory publishers. Refusal by an ILEC to provide CLEC SLI to an independent directory publisher while providing or making available these data to ILEC-affiliated directory publishers is an unjust, unreasonable, and discriminatory practice under sections 201(b) and 202(a) of the Act. While an independent publisher must engage in the costly and time-consuming process of identifying and contacting each CLEC individually in order to negotiate the terms for the release of the CLECs' SLI, directory publishers which are affiliated with the ILECs receive complete SLI, including CLEC data, automatically from their parent ILECs.

Some ILECs are willing to provide CLEC SLI to independent directory publishers, but only under terms and conditions that also result in unlawful discrimination. These ILECs -- such as Southwestern Bell and Ameritech -- are willing to provide CLEC SLI to independent directory publishers if the CLEC provides written authorization for release of its SLI to the specific publisher. Independent publishers are required to obtain CLEC authorization each time a directory is published. Moreover, some ILECs -- such as Southwestern Bell and Ameritech -- will not accept blanket authorizations for all independent publishers. However, such authorization to release the CLECs' SLI to the ILEC's directory publishing affiliate is generally part of the CLEC's interconnection agreement with the ILEC, resulting in more favorable treatment of the ILEC's affiliate. Thus, agreement to provide CLEC SLI "with authorization" is not sufficient to remedy the unlawful discrimination unless (i) the ILEC identifies which CLECs in a given geographic area have listings that will not be provided because no authorization is on file with the ILEC, and (ii) the ILEC will accept a one-time, blanket authorization from each CLEC that covers all independent publishers.

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<sup>2</sup> See Petition for Reconsideration of the Association of Directory Publishers, at 5-11 (filed Nov. 4, 1999); see also Reply of the Association of Directory Publishers to Oppositions and Comments, at 4-5 (filed Jan. 21, 2000) ("ADP Reply").

<sup>3</sup> See In re Bell Operating Companies Petitions for Forbearance From the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities, CC Docket No. 96-149, Mem. Op. and Order, 13 FCC Rcd. 2627, at ¶ 82 (1998) (recognizing that "BellSouth obtained directory listings from other LECs for use in its directory assistance services solely because of its dominant position in the provision of local exchange services throughout its region").

<sup>4</sup> See, e.g., Second Application of BellSouth for Provision of In-Region InterLATA Services in Louisiana, CC Docket No. 97-231, App. B, Tab 8, Interconnection Agreement Between BellSouth and Winstar Wireless, Inc., at 23 (filed July 9, 1998).

ADP suggests that the Commission adopt the following proposals on reconsideration to ensure that independent publishers have nondiscriminatory access to CLEC SLI:

- clarification that an ILEC that automatically provides CLEC SLI to its own directory publishing affiliate is engaged in unlawful discrimination if it does not afford independent publishers comparable access to the same data;
- a requirement that ILECs revise their standard interconnection agreement language if necessary to reverse any presumption that CLEC listings are not to be provided to publishers other than the ILEC-affiliated publisher;
- a requirement that upon receiving a request for SLI from an independent publisher, ILECs must identify by name all CLECs with listings contained in the requested data that have not authorized the ILEC to release their data to independent directory publishers;
- a requirement that ILECs accept one-time, blanket authorizations to release CLECs' SLI to all independent directory publishers.

ADP notes that some of these proposals have been successfully implemented by BellSouth. BellSouth recently announced that all new or renewed interconnection agreements into which BellSouth enters with any CLEC after March 27, 2000, will contain language authorizing BellSouth to release CLEC SLI to all directory publishers unless the CLEC requests otherwise and agreed to process amendments to current interconnection agreements to release CLEC SLI within thirty days of receipt of the amendment. Also, effective April 1, 2000, BellSouth made available a "CLEC Report," consisting of a list of CLECs, identified by company code, for which SLI for a specific directory coverage area is contained in BellSouth's database but will not be provided pursuant to a publisher's request because the CLEC has not provided authorization. After receipt of a valid initial request for SLI, BellSouth will provide up to six CLEC Reports at sixty day intervals prior to the publisher's receipt of the requested SLI. BellSouth imposed a \$10.00 fee per request to cover its costs.<sup>5</sup>

## **II. The Commission Should Promptly Dismiss the Petition for Reconsideration of the Third Report and Order Filed by NTCA.**

In adopting the presumptively reasonable benchmark rates of four cents per listing for base file SLI and six cents per listing for updated SLI, the Commission made clear that carriers remain free to charge rates that exceed the benchmarks if the higher rates are based on the carriers' costs.<sup>6</sup> In the event of a formal complaint proceeding brought by a publisher to challenge a carrier's rates that exceed

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<sup>5</sup> See Letter from James C. LeBlanc, Linda L. Myler, Heather B. Murray, and Dottie Penn, BellSouth Interconnection Services, to Directory Publishers, dated March 27, 2000, attached hereto as Exhibit A.

<sup>6</sup> Third Report and Order, at ¶ 102.

the benchmarks, the carrier would bear the burden of proof.<sup>7</sup> Accordingly, the Commission did not exempt any class of carrier from the application of its rules concerning rates for SLI.

The National Telephone Cooperative Association ("NTCA") filed a petition for reconsideration of the SLI Order contending that the Commission should adopt an alternative presumptively reasonable benchmark rate of \$0.42 per listing for small and rural telephone carriers meeting certain criteria.<sup>8</sup> ADP has opposed this petition.<sup>9</sup> The \$0.42 benchmark proposed by NTCA is based on a survey in which NTCA polled its members concerning the current rates charged by its members for SLI.<sup>10</sup> NTCA admits that only 135 of its more than 500 members responded to the survey; of those members responding, 107 indicated that their rates were based on "market-value."<sup>11</sup> However, prior to implementation of Section 222(e), most carriers believed that they could charge "whatever-the-market-will-bear" for SLI. In the Third Report and Order, the Commission made clear that rates based on "market value" violate Section 222(e)'s requirement for "reasonable rates."<sup>12</sup> Therefore, NTCA's proposal lacks a legitimate basis under the principles of Section 222(e) and the Third Report and Order and should be rejected.

ADP also urges the Commission to act on the NTCA Petition promptly. Many ADP members have reported a recurring problem in ordering SLI from small and rural telephone companies. Some small and rural telephone companies have advised ADP members -- in reliance on the NTCA Petition - - that they either will continue to charge existing rates pending resolution of the Petition or have proposed that ADP members agree to purchase their SLI at the proposed rate of \$0.42 per listing. Examples of these types of responses by carriers are attached hereto as Exhibit B. By promptly acting to dismiss the NTCA Petition because it is inconsistent with Section 222(e)'s requirement for cost-based rates, the Commission would dispel these carriers' misconceptions concerning Section 222(e) and ensure better compliance with the Third Report and Order.

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<sup>7</sup> Id.

<sup>8</sup> The National Telephone Cooperative Association Petition For Reconsideration, at 6 (filed Nov. 4, 1999) ("NTCA Petition").

<sup>9</sup> See Consolidated Opposition and Comments of the Association of Directory Publishers, at 5-6 (filed Jan. 11, 2000); ADP Reply, at 1-4.

<sup>10</sup> NTCA Petition, at 7-8.

<sup>11</sup> Id. at 3. If adopted, the NTCA proposal would permit the vast majority of its members to derive compensation in excess of costs in direction violation of the Third Report and Order.

<sup>12</sup> Third Report and Order, at ¶ 86.

In accordance with the Commission's rules, an original and one copy of this letter are being filed. If you have any questions, please feel free to contact the undersigned at (202) 429-4730.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sophie Keefer".

Sophie Keefer

Enclosures

cc: Michelle Carey, Chief, Policy and Planning Division, Common Carrier Bureau  
Jeffrey H. Dygert, Assistant Bureau Chief, Common Carrier Bureau  
Dennis Johnson, Network Services Division, Common Carrier Bureau  
William A. Kehoe III, Policy and Planning Division, Common Carrier Bureau  
Glenn T. Reynolds, Associate Bureau Chief, Common Carrier Bureau

## EXHIBIT A

March 27, 2000

Dear Directory Publisher:

In response to the requests of our customers, BellSouth is implementing the following process and will be offering the following optional report regarding subscriber listing information (SLI) of competitive local exchange carriers (CLECs) with which BellSouth has entered into interconnection agreements:

**1. Standard Interconnection Agreement**

- All new or renewed interconnection agreements into which BellSouth enters with any CLEC on or after the date of this letter will contain language authorizing BellSouth to release CLEC SLI to all independent directory publishers eligible to receive listings, unless the CLEC specifically requests otherwise.
- CLECs with existing BellSouth interconnection agreements that wish to authorize BellSouth to release their SLI to independent directory publishers should affirmatively present BellSouth, via their account executive, an amendment to their interconnection agreement.
- BellSouth will require a thirty (30) day timeframe from the date the CLEC's proposed amendment is received to process the amendment and to make the system changes necessary to enable BellSouth to release the applicable CLEC's SLI.

**2. CLEC Report**

- Effective 1 April 2000, the "CLEC Report" will be newly available upon request by a BellSouth DPDS customer. It will contain a list of CLECs by company code whose SLI for a specific directory coverage area is contained in BellSouth's database but will not be provided to the independent directory publisher because the CLECs have not amended their interconnection agreements with BellSouth to provide for release of their SLI to independent directory publishers, or because the CLECs have instructed BellSouth not to release their SLI to independent directory publishers.
- After receipt of a valid initial request for SLI from an independent directory publisher, BellSouth will provide up to six "CLEC Reports", not more frequently than every sixty (60) days and prior to the independent directory publishers receipt of the requested SLI.
- A \$10.00 fee per request has been established to allow BellSouth to recover production costs.

If you have any questions, we may be reached Monday through Friday (8:30-5:30). BellSouth appreciates your business and looks forward to serving you in the future.

James C. Leblanc  
National Sales Manager  
404-927-2735  
404-522-0075(f)

Linda L. Myler  
Product Manager  
404-927-1533  
404-584-8684(f)

Heather B. Murray  
Product Manager  
404-927-2639  
404-584-8684(f)

Dottie Penn  
DPDS Specialist  
404-927-1513  
404-522-0075(f)

## EXHIBIT B



DIRECTORS

JACK J. FARMER, PRESIDENT  
SAM WEST, VICE PRESIDENT  
FRANK K. ANTILLEY, SECRETARY  
DELMON SMITH  
DOUG BRYAN  
J.L. POOR  
TOMMY CUMBY, ASST. SEC. TREAS.  
CHARLES BYERS  
LOUIS BROOKS, JR.

**RUS**

**TAYLOR TELEPHONE COOPERATIVE, INC.**

P.O. BOX 370      TELEPHONE (915) 846-4111  
MERKEL TEXAS 79638

THOMAS HYDE  
MANAGER  
BILL WHISENHUNT  
PLANT MANAGER  
EARL LAIRD  
OFFICE MANAGER  
STEVE SINGLETARY  
OPERATIONS MANAGER

February 3, 2000

Mr. Bob Allen III  
Associated Publishing Company  
P.O. Box 980  
Abilene, TX 79604

**Subject: Taylor Telephone Cooperative, Inc. SLI Pricing**

**Dear Mr. Allen—**

This letter serves as Taylor Telephone Cooperative, Inc.'s response to the request of Associated Publishing Company, dated January 28, 2000 regarding Taylor Telephone Cooperative, Inc.'s compliance with the Federal Communication Commission's (FCC's) new Part 64, Subpart X Subscriber List Information (SLI) rules. Taylor Telephone Cooperative, Inc. intends to meet the SLI provisioning needs of Associated Publishing Company under mutually satisfactory terms and conditions developed consistent with Section 222(e) of the Communications Act together with the FCC's new Part 64 SLI rules.

As you are likely aware, in the *Directory Listing Information Order*, the FCC has acknowledged that the Section 64.2325 presumptively reasonable rates per listing of \$0.04 for base file SLI and \$0.06 for updated SLI may not accommodate all companies. The FCC arrived at the \$0.04 and \$0.06 rates through analysis of cost data provided by large companies (BOCs and GTE). Because Taylor Telephone Cooperative, Inc. does not have the economies of scale possessed by the large companies, Taylor Telephone Cooperative, Inc. does not believe the Section 64.2325 presumptively reasonable rates are reflective of Taylor Telephone Cooperative, Inc.'s current SLI provisioning costs.

The National Telephone Cooperative Association (NTCA) has filed a Petition for Reconsideration in which it requests that the FCC prescribe a separate presumptively reasonable rate for small and rural telephone companies. In its petition, NTCA has proposed a single rate of \$0.42 per listing for both base file and update listings. The NTCA bases its proposed \$0.42 rate on cost and market data supplied by over 100 carriers. Taylor Telephone Cooperative, Inc. believes the \$0.42 rate proposed by the NTCA is more reflective of the SLI costs of small companies such as Taylor Telephone Cooperative, Inc. Thus, Taylor Telephone Cooperative, Inc. proposes that it provide Associated Publishing Company with SLI at \$0.42 per listing for both base files and updates.

In addition to the per-listing charge of \$0.42 for SLI, Taylor Telephone Cooperative, Inc. proposes charging a minimum charge of \$50.00 per transmission for SLI updates. Taylor Telephone Cooperative, Inc. believes this charge is necessary to ensure reimbursement for resources expended related to each update transmission effort. The FCC indicated the reasonableness of such a charge in the *Directory Listing Information Order*.

If you have any questions, please call me at 915/846-4111.

Sincerely,

  
Earl Laird  
Office Manager

EEL/dm

March 9, 2000

The Talking Phone Book  
Attn: Colleen Dzaak  
Listing Procurement Specialist

VIA EMAIL

Dear Ms. Dzaak:

Regarding your letter requesting GT Com to amend our listing service offerings and prices to ensure full compliance with the FCC's rules, we are awaiting the final ruling from the FCC on the Petition For Reconsideration by the National Telephone Cooperative Association on behalf of the small and rural LECs. It is our understanding that the position of the NTCA is that high cost companies were not considered in the presumptively reasonable rates set by the FCC. The NTCA filed a proposed presumptively reasonable rate of \$0.42 per listing.

As you are aware, our current contract with you is set at \$0.28 per listing which is well below the proposed presumptively reasonable rate proposed for the small and rural LECs. We would therefore propose to leave our contract as is, with the option of performing a "true up" when the final FCC ruling is made in this matter.

It has also come to my attention that a bill was not rendered to your company for the 1999 listings purchased from our company. You should receive a bill within a few days.

Sincerely,

Lynda N. Bordelon  
External Affairs Manager

From: GT Com  
502 5th St.  
Port St. Joe FI 32457

850-229-7222

March 9, 2000

Colleen Dzaak, Listing Procurement Specialist  
White Directory of Carolina, Inc.  
1945 Sheridan Dr  
Buffalo, NY 14223

Dear Mrs. Dzaak:

Following my conversation March 2, 2000 with Lynn Nicaastro regarding the white page listings requested on her March 1, 2000 letter, we had the following understanding:

- As a rural telecommunications carrier lacking the economies of scale of the larger carriers on which the FCC based its \$.04 per listing default rate, FTC cannot come close to providing white page listings at that rate unless the entire database is provided. Additionally, to provide a selected portion of the database requires additional programming and processing costs. As a compromise to having full blown cost studies conducted, or to having add-on charges for specific selection availability, FTC proposes that the National Telephone Cooperative Association (NTCA) \$.42 proposed rate for rural carriers be used for the portion of the database requested.
- With White Directory's acceptance of this compromise rate, FTC agrees to provide the data requested, free of any add-on charges. The total cost will consist of the total records (approximately 4,000) times the NTCA rate of \$.42 per record.
- FTC will provide the data in compliance with the terms specified in the March 1, 2000 letter.

Should you determine that this does not fully represent the understanding we had, or should there be additional statements that I may have omitted, please let me know.

I appreciate your willingness to work with us on this.

Sincerely,

Ronald K. Nesmith  
Controller  
843-382-1269  
nesmithr@mail.ftc.org

From: Farmer's Telephone Cooperative  
1107 East Main  
Kingstree SC 29546  
(843) 382-3215